

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CARMEN SALCIDO,

Plaintiff and Appellant,

v.

PLATINUM HOME MORTGAGE
CORPORATION et al.,

Defendants and Respondents.

B286886

(Los Angeles County
Super. Ct. No. KC068830)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dan Thomas Oki, Judge. Affirmed.

Herzlich & Blum, Allan Herzlich, Jerome J. Blum and Marta Roza for Plaintiff and Appellant.

Boren, Osher & Luftman, Jeremy J. Osher and Aaron M. Gladstein for Defendants and Respondents.

Carmen Salcido appeals from a judgment against her following a successful summary judgment motion by respondents Platinum Home Mortgage Corporation (Platinum), New Ventures, Inc., Sanjesh Sharma (Sharma), and Aracely Sharma (Aracely) (collectively, Respondents).¹ Salcido obtained a \$240,000 judgment against Sharma. To enforce the judgment, she served an earnings withholding order on Platinum, Sharma's employer, in January 2014. Despite evidence that Sharma had earned over \$200,000 in 2012 and 2013 as a mortgage broker, Platinum's response to the earnings withholding order reported that Sharma was earning only \$2,773 per month. Accordingly, Platinum paid Salcido semimonthly garnished sums between \$295 and \$366.

Suspecting that Platinum had misreported Sharma's income and was withholding money, Salcido filed this action in October 2016. She asserted claims for an alleged failure to honor the earnings withholding order as well as for alleged violation of an assignment order that she obtained in July 2016.

Respondents moved for summary judgment. They supported their motion with evidence that Sharma's compensation had changed in November 2013 due to poor performance of the Platinum branch office that Sharma managed and that, as a result of the change, Sharma lost the right to commissions that he had previously received. Salcido attacked

¹ Aracely Sharma is Sanjesh Sharma's wife. For clarity, we refer to Aracely Sharma using her first name. No disrespect is intended.

the credibility of that evidence, but did not provide any evidence of her own that contradicted it.

Salcido also made several requests for a continuance to permit further discovery that she claimed might uncover evidence supporting her claims. The trial court denied Salcido's continuance requests, finding that Salcido had been dilatory in pursuing discovery. The court then granted summary judgment.

We affirm. The trial court acted within its discretion in denying the continuance requests based upon Salcido's lack of diligence in pursuing discovery and her failure to identify any specific evidence that she might obtain through further discovery that was essential to defeat summary judgment. In addition, the evidence that Salcido did provide in opposition to the summary judgment motion was not sufficient to raise any triable issue of material fact.

BACKGROUND

1. Efforts to Collect on the Judgment Against Sharma

On December 29, 2008, Salcido obtained a stipulated judgment against Sharma in the amount of \$240,000 (2008 Judgment). The United States Bankruptcy Court for the Central District of California later found the judgment nondischargeable.

Salcido's counsel conducted a judgment debtor examination of Sharma on October 25, 2013. On January 23, 2014, Salcido served an earnings withholding order (Withholding Order) on Platinum. Platinum served a response to the Withholding Order, reporting that Sharma had semimonthly earnings of \$1,386.67.

Sharma filed a claim of exemption to the Withholding Order, stating that he needed all his earnings to support himself and his family. Sharma supported his exemption claim with a

financial statement reflecting monthly take-home pay of \$2,222 and monthly expenses of \$10,312.

The trial court denied Sharma's exemption claim on March 24, 2014. The court noted that Sharma had testified during his debtor examination that his yearly earnings were approximately \$200,000 based upon his 2012 and 2013 income. The court also found that Sharma's representation "of his purported gross monthly earnings of \$2,772.00 on his claim lacks credibility in proportion to his stated living expenses on that same form, which are approximately 4 times higher than his purported earnings."

On June 27, 2016, the court issued an order assigning to Salcido "any and all payments due or to become due to [Sharma] from the Obligors" (Assignment Order). Obligors were defined as "any and all persons and/or entities from whom (or which) monies are currently due or may become due to [Sharma] and/or to [Sharma's] spouse, Aracely Sharma—including, without limitation, Obligors Platinum Home Mortgage Corporation and New Ventures, Inc."² The Assignment Order excluded "earnings of an employee"; i.e., monies paid subject to enforcement only via a wage garnishment." Salcido served the Assignment Order on Platinum, NVI, Sharma, and Aracely during July 2016.

2. Proceedings in the Trial Court

Salcido filed this action on October 31, 2016. The complaint alleged that Respondents violated the Withholding Order and the Assignment Order and committed "tortious acts"

² New Adventures, Inc. (NVI) apparently is an entity under Sharma's control involved in the real estate business.

to hinder and defraud Salcido in her efforts to enforce the 2008 Judgment.

The trial court conducted a case management conference on March 27, 2017, during which it set a trial date of December 5, 2017. Salcido's counsel agreed to the trial date.

Following the case management conference, Salcido did not propound any discovery requests for over three months. On July 5, 2017, she served a set of 35 requests for production of documents on Platinum.

On August 28, 2017, Respondents filed their summary judgment motion. Salcido's opposition was due on October 19, 2017.

On September 22, 2017, Salcido filed an ex parte application seeking an order specially setting a hearing date on a motion to compel further responses to her document requests and requesting a continuance of the summary judgment motion and trial. The application explained that the next available regularly scheduled hearing date for a motion to compel was December 20, 2017, *after* the dates for the hearing on the summary judgment motion and for trial. Salcido filed a declaration of counsel in support of her application. The declaration addressed Platinum's responses to document requests that Salcido argued were insufficient or improper and explained difficulties that she had encountered in scheduling depositions. However, the declaration did not describe any particular information essential to the summary judgment opposition that Salcido thought she might be able to obtain through additional discovery.

Respondents opposed the ex parte application. They supported their opposition with a declaration from counsel stating that Salcido had not attempted to schedule depositions

until September 6, 2017, when she requested dates for the depositions of Sharma, Aracely, and the “person most knowledgeable” (PMK) for Platinum. Respondents agreed to two dates that Salcido had proposed for the depositions of Sharma and Aracely, but Salcido subsequently withdrew those dates because her lead counsel had become unavailable. With respect to the PMK deposition, the declaration stated that Salcido had not served a deposition notice identifying the topics for the deposition. Rather than a tailored list of topics, Salcido had simply repeated her document requests.

The trial court denied the ex parte application. The court’s order stated that “it does not appear that plaintiff has been diligent in pursuing discovery.”

On October 10, 2017, nine days before her opposition to the summary judgment motion was due, Salcido filed a second ex parte application for an order continuing the hearing date on the motion for summary judgment and the trial date. Salcido argued that the trial court’s ruling that she had not been diligent in discovery was incorrect, claiming that “[e]ach of Plaintiff’s discovery efforts have been diligent, timely and within statutory parameters.” Salcido’s counsel submitted another declaration in support of this application. The declaration stated that there were still no agreed-upon dates for the depositions of Sharma, Aracely, and Platinum, and the depositions were “likely to reveal facts and/or documents essential to justify opposition.” The declaration provided two examples of information that further discovery might reveal. The first was a sublease for office space between Platinum and Sharma, which Salcido argued might involve rent payments by Platinum to Sharma or to Sharma’s landlord that were subject to the Assignment Order. The second

was the possibility of obtaining documents similar to one that had already been produced showing how “Defendant Sharma and/or the Branch’s income may have changed during each of the months subsequent to the March 31, 2016 report provided.”

The trial court denied the application on October 10, 2017. The court’s order stated that “(1) Plaintiff fails to demonstrate that evidence exists to oppose the [motion for summary judgment] that could not have been obtained previously. (2) This is an improper motion for reconsideration.”

The trial court heard the motion for summary judgment on November 2, 2017. Prior to the hearing, the trial court issued a tentative decision (Tentative). The Tentative included rulings on evidentiary objections and on requests for judicial notice, and denied Salcido’s third request for a continuance of the motion that Salcido had included in the body of her opposition. On the merits, the Tentative concluded that triable issues of material fact existed with respect to Respondents’ compliance with both the Withholding Order and the Assignment Order. Following oral argument, the trial court changed its view on the merits and issued an order granting summary judgment.

DISCUSSION

1. Salcido Failed to Provide Evidence Sufficient to Raise a Triable Issue of Material Fact

A. *Standard of review*

We apply a de novo standard of review to the trial court’s summary judgment ruling. We interpret the evidence in the light most favorable to Salcido as the nonmoving party, and resolve all doubts about the propriety of granting the motion in her favor. (*Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 206.) We consider all the evidence before the trial court

except that to which objections were made and properly sustained. (*Pipitone v. Williams* (2016) 244 Cal.App.4th 1437, 1451–1452.) Although we independently review Respondents’ motion, Salcido has the responsibility as the appellant to demonstrate that the trial court’s ruling was erroneous. (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 372.)

In exercising our independent review, we apply the standards applicable to summary judgment motions. A defendant moving for summary judgment has an initial burden of production to make a prima facie showing that there are no triable issues of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850–851 (*Aguilar*).)³ Once the moving party does so, the burden of production shifts to the opposing party to show the existence of material disputed facts. (§ 437c, subd. (p)(2); *Aguilar*, at pp. 850–851.) The opposing party must make that showing with admissible evidence. (§ 437c, subd. (d); *Jambazian v. Borden* (1994) 25 Cal.App.4th 836, 846.)

B. *First cause of action (for Platinum’s alleged failure to honor the Withholding Order)*

Salcido’s first cause of action alleges that Platinum violated sections 706.153 and 706.154 by failing to garnish the proper amount of earnings. Salcido claims that Platinum failed to remit amounts it should have garnished based upon sales commissions that Sharma earned.

³ Subsequent undesignated statutory references are to the Code of Civil Procedure.

The trial court properly adjudicated this claim against Salcido. Salcido failed to provide evidence contradicting Respondents' showing that Sharma's compensation changed in November 2013 and that he was no longer entitled to commissions after that change.

i. *Respondents' evidence*

The evidence that Respondents submitted in support of their summary judgment motion included declarations from several Platinum employees explaining that Sharma's compensation changed as of November 1, 2013. Anthony Prochenski, Platinum's senior vice-president of accounting and finance, testified that, as of the end of October 2013, the Platinum branch that Sharma managed had operated at a substantial loss for the year. Prochenski's declaration attached copies of monthly statements of income for the branch that substantiated that testimony. The declaration also attached a copy of an e-mail that Prochenski sent to Sharma on November 7, 2013, referring to the branch's "lower than expected production levels" and suggesting possible staff reductions. The e-mail noted that Sharma had "mentioned in an email to Bill you were offering to forego [*sic*] your override for the time being. Please send Carrie Williams an email indicating you will forgo your override effective November 1, 2013." The e-mail copied Platinum's executive vice-president, Lee Gross.

Gross also submitted a declaration. His declaration attached a copy of an e-mail he sent to Sharma (with a copy to Prochenski) on November 7, 2013, about an hour after Prochenski's e-mail to Sharma. Gross's e-mail stated, "We have no choice at this point but to begin to reduce branch costs to help return to profitability." The e-mail then identified several items

to be implemented, including, “We have drafted a revised comp plan for manager, see attached.”⁴ Gross testified that he sent his e-mail “in furtherance of Platinum’s best business interests” and that it “had nothing to do with a monetary judgment against . . . Sharma.”

At the time Gross sent this e-mail, Sharma’s compensation included commissions. Gross’s declaration explained that, effective September 1, 2012, Sharma’s compensation agreement entitled him to receive commissions on both his personal loan production and the loan production for the branch. The commissions were calculated as “basis points.” For Sharma’s personal loans he received commissions consisting of 100 basis points (or 1 percent of the loan amount). For branch loans he received 50 basis points (or .5 percent of the loan amount).

Williams also submitted a declaration. Her declaration attached a copy of an e-mail from Sharma that Williams received on November 15, 2013. In the e-mail, Sharma requested that Williams “use this email to serve as verification that I will be eliminating my 50 [basis points] override on the overall branch production effective 11.1.13.”

Williams’s declaration also attached a copy of a “Production Branch Manager Compensation Plan” for Sharma dated November 1, 2013 (November 2013 Compensation Plan). That

⁴ Gross’s declaration did not include a copy of the revised compensation plan that he apparently enclosed in the e-mail. As discussed below, the revised compensation plan for Sharma that Platinum ultimately implemented was attached to the declaration of Carrie Williams, Platinum’s vice-president of human resources.

plan reflected that, effective November 1, 2013, Sharma was to receive a monthly salary of only \$2,773.33 (paid semimonthly), and was not entitled to commissions for either his personal loan production or the branch loan production.

In addition, Williams's declaration attached copies of Sharma's earnings statements from March 31, 2014 (after the trial court denied Sharma's exemption claim) through August 15, 2017. Those statements reflected that Sharma earned a semimonthly salary in amounts ranging from \$1,386.67 through \$1,820 during that time period with no commissions. Williams testified that she instructed Platinum's payroll service to garnish Sharma's compensation in compliance with the Withholding Order. Each of the earnings statements after March 31, 2014, reflects that Sharma's earnings were in fact garnished.

Thus, on its face the evidence that Respondents submitted in support of their summary judgment motion showed that (1) Platinum changed Sharma's compensation for business reasons effective November 1, 2013; and (2) Platinum properly garnished Sharma's compensation in accordance with his revised compensation.

ii. *Salcido's opposition*

In response to this evidence, Salcido submitted her own declaration and a declaration from counsel attaching various exhibits. None of the exhibits suggested that Platinum had actually paid Sharma more than Platinum's earnings statements disclosed. Rather, Salcido argued that Platinum's records documenting the change to Sharma's compensation in November 2013 suggested an inference that Platinum actually *owed* Sharma more than it had paid. Salcido relied on the facts that (1) although Sharma had signed prior compensation plans,

Platinum did not produce a signed copy of the November 2013 Compensation Plan; and (2) Sharma's November 15, 2013 e-mail to Williams verifying the elimination of his override commission on branch loan production did not mention his commission on personal loan production. Thus, Salcido claimed that a disputed issue of fact existed as to whether Platinum owed Sharma commissions on personal loan production that it had not paid. Salcido argued that the inference of nonpayment was strengthened by the suspicious timing of the change in Sharma's compensation shortly after his debtor examination.

iii. *Salcido's contentions on appeal*

Salcido makes the same arguments on appeal. Salcido claims that the evidence Respondents submitted in support of their motion suggests that Sharma never agreed to eliminate his commissions on his personal loan production. Salcido relies on (1) the absence of Sharma's signature on the November 2013 Compensation Plan; (2) the fact that Sharma signed previous changes to his compensation plan; (3) the lack of any mention of personal loan commissions in Sharma's November 15, 2013 e-mail confirming the commission change; and (4) the timing of the change to Sharma's compensation shortly after his debtor examination. Salcido argues that an employer's decision to withhold compensation that is due for the purpose of defeating a judgment creditor's rights violates section 706.153.⁵

⁵ Section 706.153, subdivision (a) provides that "[n]o employer shall defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the judgment creditor's rights under an earnings withholding order issued pursuant to the procedures provided by this chapter."

We need not consider whether the inferences that Salcido draws from Respondents' evidence are sufficient to create a triable issue of fact as to whether Sharma actually agreed to give up commissions on his personal loan production. That is because Salcido did not provide any evidence that Sharma's agreement to the change, even if disputed, was *material*. (See § 437c, subd. (c); *Kelly v. First Astri Corp.* (1999) 72 Cal.App.4th 462, 470 (*Kelly*) ["To be 'material' for purposes of a summary judgment proceeding, a fact must . . . be essential to the judgment in some way"], citing Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial 3 (The Rutter Group 1998) ¶ 10:271 rev. #1, 1998.)

Salcido did not provide any support for her claim that Sharma's agreement was necessary for Platinum to eliminate commissions from his compensation.⁶ In contrast, the evidence that Respondents submitted in support of summary judgment provided at least *prima facie* support for the conclusion that Sharma's agreement was *not* necessary. The November 2013 Compensation Plan, although unsigned, states, "I understand that this Schedule A is subject to change at any time in the Company's sole discretion." Respondents also submitted a copy of Sharma's original employment agreement, signed by Sharma, as an exhibit to the Gross declaration. Section 11(A)(6) of that agreement states that, "[n]otwithstanding anything to the contrary herein, Company may, *in its sole and absolute*

⁶ Because Salcido did not provide evidence sufficient to create a dispute concerning whether Platinum withheld commission compensation that was actually due to Sharma, we also need not reach the issue whether it did so with the *intent* to defeat Salcido's collection rights. (§ 706.153, subd. (a).)

discretion, change the commission rates set forth in this Agreement, and the manner and schedule of payment, at any time on a prospective basis with 30 days notice to Manager, but no such change will affect any commission already earned by Manager as of the date the change is announced.”⁷ (Italics added.) Having failed to provide any evidence that Sharma’s agreement was a necessary condition for a change in his commission compensation, Salcido failed to show why the presence of such agreement was “essential to the judgment.” (*Kelly, supra*, 72 Cal.App.4th at p. 470.)

Platinum provided evidence in the form of the November 2013 Compensation Plan and Sharma’s monthly earnings statements showing that Sharma’s compensation in fact changed and that he was no longer entitled to commissions as of November 1, 2013. Other than suggesting reasons to infer from this evidence that Sharma did not *agree* to the change, Salcido did not provide any evidence disputing that the change occurred. Nor did Salcido submit any evidence suggesting that Platinum was delaying paying any commissions that were due or was actually paying them to Sharma by means other than his reported compensation. Thus, whether or not Sharma agreed to give up all his commissions, the undisputed evidence shows that he was not entitled to them.

⁷ Neither party’s briefs address this provision.

**C. *Second cause of action (for Respondents’
alleged failure to honor the Assignment
Order)***

Salcido’s second cause of action alleges that Respondents violated the Assignment Order by failing to pay assigned sums to Salcido. The trial court also properly adjudicated this claim against Salcido.

i. *Respondents’ evidence*

The Assignment Order was effective on the date of service. (§ 708.540.) As mentioned, Salcido served the order on each Respondent during July 2016.

Sharma submitted a declaration stating that he was the “principal and agent for service of process” of NVI. He testified that, since service of the Assignment Order, “I have not received any monies from NVI.” Aracely also submitted a declaration stating that she had not received any payments from NVI since she was served with the Assignment Order.

On behalf of Platinum, Williams’s declaration stated that, since the date Platinum was served with the Assignment Order, Platinum has “reimbursed both [Aracely] and . . . Sharma, on a monthly basis, for certain business expenses, upon their respective submissions of request forms and back-up documentation/receipts for same.” Other than earnings as an employee, these were the only disbursements by Platinum to Sharma and Aracely that Williams identified after Platinum received the Assignment Order.

ii. *Salcido’s opposition*

Salcido’s opposition identified testimony by Sharma in a debtor’s examination on March 2, 2016, that NVI had received referral fees in 2015 in the amount of \$30,000 that Sharma had

withdrawn to pay family bills. Salcido cited this as evidence that Sharma and Aracely had received money from NVI that NVI and/or Sharma and Aracely should have paid to Salcido under the Assignment Order.⁸

The opposition also cited evidence that Sharma had subleased office space to Platinum and argued that Platinum should have paid rent due under that sublease to Salcido under the Assignment Order.⁹

Salcido also argued that the terms of the Assignment Order required reimbursements to be paid to her rather than to Sharma or Aracely whether or not the reimbursements were for business or personal expenses. In addition, she identified several reimbursements that she claimed were for personal rather than business expenditures.

iii. *Salcido's contention on appeal*

On appeal, Salcido has abandoned her argument that rent payments Platinum made to Sharma's landlord violated the Assignment Order. She argues only that Platinum violated the order by failing to pay expense reimbursements to Salcido rather than to Sharma and Aracely. Salcido claims that (1) all reimbursements should have been paid to her, regardless of whether they were for business expenses that Sharma or Aracely

⁸ As the trial court noted, these disbursements occurred before the Assignment Order was served.

⁹ In Respondents' reply, they pointed out that Platinum paid rent under the sublease directly to Sharma's landlord, not to Sharma.

incurred; and (2) some of the expenses that Platinum reimbursed were actually personal rather than for business purposes.

As it did below, Platinum argues that it was obligated to reimburse Sharma's and Aracely's business expenses under rules governing lenders that are approved by the Federal Housing Administration (FHA).¹⁰ Platinum cites various publications by the Department of Housing and Urban Development (HUD), including a HUD handbook, describing the requirement that an FHA "mortgagee" such as Platinum "pay all of its own operating expenses." The trial court took judicial notice of these publications.

The publications support Platinum's claim that HUD rules require it to reimburse employees who pay operating expenses out of their personal funds. HUD prohibits arrangements in which "a party, other than the approved mortgagee, pays some or all of the branch office expenses." An unreimbursed payment of Platinum's business expenses seems to fall within such a prohibition.

¹⁰ Salcido argues that the trial court should not have permitted Platinum to raise this argument in its reply pleadings. In light of Salcido's failure to provide any authority disputing Platinum's argument on appeal, she cannot show that she was prejudiced by the lack of an opportunity to respond to the argument in the trial court. (§ 475; *F.P. v. Monier* (2017) 3 Cal.5th 1099, 1107 [appellate courts may not reverse "for errors in civil cases *absent prejudice*"].)

Salcido does not dispute that the HUD rules apply to the payments at issue here.¹¹ Instead, she argues that the rules did not require Platinum to reimburse Sharma or Aracely. Salcido claims that, if it was a violation of the HUD rules for a third party to pay Platinum's expenses, such a violation occurred once Sharma or Aracely paid a Platinum business expense. She argues that, at that point, "there were no more [Platinum] expenses to be paid," and any reimbursement amounts were simply monies due to Sharma or Aracely that were subject to the Assignment Order.¹²

¹¹ In her reply brief, Salcido suggests that there is a material question of fact about the "validity, extent and/or effectiveness of federal 'regulation' versus the 'Order' of a Superior Court." Whether the HUD rules at issue preempt a superior court order is a question of law, not fact. Salcido fails to provide any argument or authority in support of a claim that the Assignment Order would prevail in a conflict with federal law. We therefore do not consider the argument.

¹² Neither party addresses whether an expense reimbursement is a "right to payment due or to become due" that is assignable under section 708.510, or whether the Assignment Order should be construed to apply to such reimbursements. (See *Casiopea Bovet, LLC v. Chiang* (2017) 12 Cal.App.5th 656, 661 [Section 708.510 provides "'an optional procedure for reaching assignable forms of property that are subject to levy, such as accounts receivable, general intangibles, judgments, and instruments. This section does not make any property assignable that is not already assignable'"], quoting Legis. Com. com., 17 West's Ann. Code Civ. Proc. (2009 ed.) foll. § 708.510, p. 383.) The types of payments that section 708.510 identifies as assignable (albeit without limitation) are in the nature of

Salcido does not provide any authority in support of this interpretation of the HUD regulations. An equally plausible interpretation is that paying a Platinum business expense that Platinum later reimburses is simply advancing a payment by Platinum itself.

Even when independently reviewing a summary judgment ruling, we presume that the judgment is correct unless error is “‘affirmatively shown.’” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) Accordingly, “[i]t is the appellant’s responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on the appellant’s behalf.” (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656.) Salcido’s mere assertion that paying to her the expense reimbursements that were due to Sharma or Aracely would not violate the HUD regulations does not meet that responsibility.

Salcido similarly has not met her obligation as the appellant to identify evidence in the record showing that Platinum reimbursed personal, rather than business, expenses. Salcido points to evidence that Platinum reimbursed Sharma for

earnings from property, investments, or labor (i.e., rents, commissions, royalties, payments due from a patent or copyright, insurance policy loan value, or wages due from the federal government that are not subject to garnishment). In contrast, an expense reimbursement is a neutral transaction: It is not additional money that increases a judgment debtor’s net worth, but is simply payment for a cost that the debtor has incurred on behalf of another. However, because the parties have not raised the issue, we do not consider it.

hotel expenses for a business conference that exceeded the length of the conference and reimbursed Sharma and Aracely for cellular telephone expenses. But Salcido has not provided any evidence that these reimbursements were for personal activities.

Salcido has not identified any evidence concerning what Sharma did during the additional time he stayed in the hotel following the conference. From the record before us, it is at least as likely that he was conducting business, such as meetings with potential clients, as that he was pursuing only leisure activities. Nor has Salcido provided any evidence that Aracely and Sharma used the cellular telephones for which they were reimbursed for personal rather than business purposes.

Because Salcido would have the burden at trial of proving that Platinum reimbursed personal expenses, she may defeat summary judgment only by identifying evidence from which a jury could reasonably find it more likely than not that Platinum paid the amounts in question for the personal use of Sharma or Aracely. (*Aguilar, supra*, 25 Cal.4th at p. 857.) She has not done so.

D. *Third and fourth causes of action (for Respondents' alleged tortious acts to hinder and defraud creditor)*

Salcido does not provide any explanation of the statutory or common law basis for her third and fourth causes of action. Generally, those causes of action purport to state claims for intentionally interfering with Salcido's efforts to collect on her judgment against Sharma by "manipulating the nature of monies" due to Sharma and by misrepresenting the nature of his compensation. In support of these claims, Salcido cites the same alleged conduct underlying her first two claims. The evidence

that Salcido cites fails to support her third and fourth causes of action for the same reasons that it is insufficient to support her first two causes of action.

The only additional evidence that Salcido cites in support of her interference claims is statements by Platinum’s in-house counsel, Ben Clark, that Salcido claims were false or misleading. Salcido identifies a statement by Clark to Salcido’s former counsel explaining Sharma’s compensation that omitted the fact that Sharma was originally paid a commission on his personal loan production. She also challenges a statement by Clark that “[o]n November 15, 2013 . . . [Sharma] notified us in writing that he will be eliminating his override, and was strictly compensated via his salary.”

Salcido fails to provide any evidence or argument as to why any dispute over the truth of these statements is material. As discussed above, she failed to rebut Platinum’s evidence that Sharma’s commissions on his personal loan production were actually eliminated. Platinum provided evidence that Sharma was in fact “strictly compensated via his salary.” Salcido therefore provides no evidentiary basis to conclude that, even if the statements at issue were misleading, they hindered or interfered in any way with her efforts to collect on the judgment.

2. The Trial Court Did Not Abuse its Discretion in Denying Salcido’s Requests for a Continuance to Seek Additional Evidence

Section 437c, subdivision (h) provides that “[i]f it appears from the affidavits submitted in opposition to a motion for summary judgment . . . that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to

be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.”

As mentioned, Salcido brought two ex parte motions seeking a continuance prior to responding to Respondents’ summary judgment motion. In addition, she argued in her summary judgment opposition that a continuance was necessary.

In rejecting the argument in Salcido’s opposition, the trial court noted that Salcido had failed to provide any affidavit supporting her request. Because section 437c, subdivision (h) requires a ruling “from the affidavits,” the trial court did not err in that ruling.

The trial court also acted within its discretion in denying Salcido’s ex parte continuance requests based upon Salcido’s lack of diligence in pursuing discovery. A “ ‘majority of courts’ have held that ‘lack of diligence may be a ground for denying a request for a continuance’ ” under section 437c, subdivision (h), even when a party shows that additional essential evidence might be available. (*Rodriguez v. Oto* (2013) 212 Cal.App.4th 1020, 1038 & fn. 7.) As Division Five of this appellate district explained in *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, section 437c, subdivision (h) requires a party seeking a continuance to “declare why ‘facts essential to justify opposition . . . cannot, for *reasons stated, then* be presented” (§ 437c, subd. (h), italics added), and courts have long required such declarations to be made in good faith” (*Cooksey*, at p. 257). The court reasoned that “[a]n inappropriate delay in seeking to obtain the facts may not be a valid reason why the facts cannot then be presented,” and

therefore may preclude a party from making the showing required under section 437c. (*Cooksey*, at p. 257.)

Moreover, when a party seeking a continuance fails to show that “facts essential to justify opposition may exist,” a trial court may exercise its discretion to reject a continuance if a party has not been diligent in attempting to discover whether there might be such facts. (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398.) The declarations Salcido provided in support of her continuance requests did not show that facts “essential” to her opposition might exist. The declaration that Salcido provided in support of her first request for a continuance did not identify *any* evidence that Salcido expected to obtain through further discovery. The declaration supporting her second request provided only two examples of additional information that further discovery might reveal. The first was the sublease, which Salcido apparently was successful in obtaining, and which in any event does not relate to any issue she has raised on appeal.¹³ The second was general information about how the income of Sharma or the Platinum branch he managed “may have changed.” Salcido did not explain how this information was essential to her opposition. As discussed, Platinum did provide information concerning how Sharma’s compensation changed, and Salcido has not provided any basis to conclude that Platinum actually paid Sharma more money than Platinum’s records reflect.

¹³ Salcido submitted the sublease as an exhibit in support of her opposition to the summary judgment motion.

With respect to the second ex parte request, the trial court also properly ruled that it was an improper motion for reconsideration. Such a motion must be made upon new or different facts or law, which Salcido did not provide. (§ 1008, subd. (a).) The trial court's denial of Salcido's second ex parte continuance request was therefore sufficient on that ground alone. Thus, the trial court could properly exercise its discretion to determine if Salcido had acted diligently in pursuing discovery.

The trial court reasonably concluded that Salcido had not. During the more than nine months between the time that Salcido filed her complaint and the time that Respondents moved for summary judgment, the only discovery that Salcido served was a request for production of documents. She served that request on July 5, 2017, more than eight months after she filed her complaint and more than three months after the trial court had set an agreed-upon trial date of December 5, 2017. Salcido argues that Respondents did not provide all documents responsive to her request, but she never filed a motion to compel.

Salcido also did not seek any depositions until after Respondents had already filed their summary judgment motion. Even after the motion was pending, Salcido's counsel rejected dates that Respondents offered for the depositions of Sharma and Aracely, although the suggested dates were among those that Salcido had originally proposed. Salcido failed to provide a timely list of topics for the deposition of Platinum's "person most knowledgeable," leading to objections that could not be resolved before her summary judgment opposition was due.

Under these circumstances, the trial court reasonably could conclude that Salcido failed to pursue discovery with appropriate diligence and that no continuance was warranted.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.